

ORDINANCE NO. 95-5

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA AMENDING ORDINANCE NO. 93-28 ENTITLED "PALM BEACH COUNTY MINORITY/WOMEN BUSINESS ENTERPRISE ORDINANCE;" PROVIDING FOR THE SUBSTITUTION OF "OFFICE OF MINORITY/WOMEN BUSINESS ENTERPRISE" FOR "OEO" AND "OFFICE OF EQUAL OPPORTUNITY"; PROVIDING FOR REFERENCE TO PURCHASING ORDINANCE NO. 93-27; PROVIDING FOR DEFINITIONS; PROVIDING FOR CONTRACT AWARD REVIEW; PROVIDING FOR USE OF BID PREFERENCE ON REVENUE GENERATING CONTRACTS; PROVIDING FOR CERTIFICATION ELIGIBILITY CRITERIA; PROVIDING FOR ELIGIBILITY FOR PREFERENCE PROGRAMS; PROVIDING FOR MEMBERSHIP ON THE M/WBE ADVISORY COMMITTEE; PROVIDING FOR REFERENCE TO THE COUNTY'S ETHICS RESOLUTION; REPEALING LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Palm Beach County, Florida enacted Ordinance No. 93-28, replacing Ordinance No. 91-34, which established the County's Minority/Women Business Enterprise Program; and

WHEREAS, the M/WBE Advisory Board and staff have made recommendations for amendments to the M/WBE ordinance; and

WHEREAS, the Office of Minority/Women Business Enterprise has been established as a separate office of the County, independent from the Office of Equal Opportunity (OEO); and

WHEREAS, the County enacted Resolution No. 94-693, which set forth ethics standards for advisory boards; and

WHEREAS, the Board of County Commissioners has deemed it necessary to amend Ordinance 93-28.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA that Palm Beach County Ordinance No. 93-28 is amended to read as follows:

SECTION I.

Each and every reference to the "Office of Equal Opportunity" or "OEO" in Ordinance No. 93-28 shall be amended to read "Office of Minority/Women Business Enterprise."

SECTION II.

Each and every reference to "Ordinance No. 90-25" in Ordinance

1 No. 93-28 is amended to read "Ordinance No. 93-27."

2 SECTION III.

3 The definition of OEO in Section IV(W). of Ordinance No. 93-28
4 is hereby deleted, and replaced by the following:

5 "Commercially Useful Function" means a function which results
6 in the provision of materials, supplies, equipment, or services to
7 customers other than governmental entities. A M/WBE must show a
8 demonstrated expertise in the commodity area(s) that they are
9 supplying and those commodity area(s) must be identified and listed
10 in the certification approval letter. Acting merely as a conduit
11 to transfer funds to another business does not constitute a
12 commercially useful function.

13 SECTION IV.

14 Section IV(00) is added to Ordinance No. 93-28 and shall read
15 as follows:

16 "Preferential programs" means the preferences extended for
17 M/WBE participation in the Ranking of Responsive Bidders and the
18 Bid Preference Sections of the M/WBE Ordinance. It also means the
19 maximum point allocation for professional service contract award
20 evaluations.

21 SECTION V.

22 Section XI. - CONTRACT AWARD REVIEW of Ordinance No. 93-28 is
23 hereby amended to read as follows:

24 Bidders or proposers shall provide the County with all
25 documents regarding participation and good faith efforts required
26 in the bid documents or requests for proposals. The documents
27 shall include a list of all M/WBE subcontractors who will be used
28 on the contract. If a contractor lists a M/WBE ~~which has not been~~
29 ~~certified by the County or a M/WBE who has been decertified after~~
30 submission of bids or proposals, but prior to the award of the
31 contract, the County shall require the contractor, within a
32 specific reasonable time frame as contained in the Policies and
33 Procedures, to attain the M/WBE goal ~~within~~ certified M/WBEs or
34 make a showing of good faith efforts exercised in an attempt to do
35 so.

1 The Department responsible for letting the contract shall
2 forward the bid/proposal documents relative to M/WBE participation
3 of all bidders/proposers to the ~~000~~ Office of Minority/Women
4 Business Enterprise within three (3) days of opening the
5 bids/proposals.

6 The Office of ~~Equal Opportunity~~ Minority/Women Business
7 Enterprise shall provide its evaluation of bids to the Department
8 responsible for letting the contract.

9 SECTION VI.

10 Section XIX. Bid Preference System

11 A bid preference system is hereby established for purchases
12 estimated to be less than \$500,000. This bid preference system may
13 be utilized by a County Department or by the Goal Setting Committee
14 when a review of the participation reports indicates that
15 utilization of the system will assist the Department in meeting its
16 annual goals. This bid preference system will not be utilized for
17 County construction projects. When appropriate, this system may be
18 utilized on a gender or ethnic specific basis allowing for a bid
19 preference for the bidder with the highest participation amongst a
20 particular gender or ethnic category.

21 Award will be made to the bidder who includes the highest
22 M/WBE utilization as long as that bid does not exceed the low bid
23 by ten percent.

24 When appropriate, this system may also be utilized on revenue
25 generating contracts awarded on a price alone basis. Award will be
26 made to the bidder who includes the highest M/WBE utilization as
27 long as that bid is not lower than the high bid by ten percent.

28 SECTION VII.

29 Section XX(A)(3) is hereby added and shall read as follows:

30 Commercially Useful Function

31 A M/WBE is considered to perform a commercially useful
32 function when it is responsible for execution of a distinct element
33 of work of a contract and carrying out its responsibilities by
34 actually performing, managing and supervising the work performed.

35 A commercially useful function is a function which results in

1 the provision of materials, supplies, equipment, or services to
2 customers other than governmental agencies.

3 SECTION VIII.

4 Section XX(G). Reciprocal Certification of Ordinance 93-28 is
5 hereby amended to read as follows:

6 Only firms certified by Palm Beach County or by any other
7 political subdivision or governmental entity and granted reciprocal
8 certification by Palm Beach County will be used in determining goal
9 attainment and will have the advantage of preferential programs
10 contained within this ordinance. Reciprocity shall be granted to
11 M/WBE firms which have been certified by other jurisdictions which
12 meet the certification standards of Palm Beach County. A business
13 shall not be eligible for reciprocal certification if the business
14 has average/annual gross sales in commodities ~~and/or professional~~
15 ~~services, labor and material~~ in excess of ~~\$1,000,000.00~~ \$2,000,000
16 over the past three years, has average/annual gross sales in
17 professional services in excess of \$3,000,000 over the past three
18 years, or has average/annual gross sales in construction in excess
19 of ~~\$5,000,000.00~~ \$7,000,000 over the past three years.
20 Disadvantaged Business Enterprises shall not be eligible for
21 reciprocal certification.

22 Eligibility for reciprocal certification shall be contingent
23 upon a determination by the ~~0E0~~ Office of Minority/Women Business
24 Enterprise that the standards of the certifying jurisdiction meet
25 the certification standards of Palm Beach County. The M/WBE
26 seeking reciprocal certification must submit to ~~0E0~~ Office of
27 Minority/Women Business Enterprise a copy of the current
28 certification from the certifying jurisdiction and copy of the
29 completed application submitted to the certifying jurisdiction
30 along with any affidavits of continued eligibility.

31 SECTION IX.

32 Section XX(H). Recertification of Ordinance 93-28 is hereby
33 amended to read as follows:

34 Certified M/WBEs are required to submit an affidavit of their
35 continued eligibility as an M/WBE ~~annually~~ every three years. The

1 ~~0E0~~ Office of Minority/Women Business Enterprise may conduct site
2 visits or review documents to ensure continued compliance as an
3 M/WBE. If there has been a change in ownership interest and/or
4 control, the M/WBE must notify the ~~0E0~~ Office of Minority/Women
5 Business Enterprise within thirty (30) days of the change.
6 Supporting documentation may be required for continued
7 certification. A company that fails to submit its affidavit of
8 continued eligibility or fails to submit documentation requested by
9 the ~~0E0~~ Office of Minority/Women Business Enterprise will be
10 ~~decertified~~ no longer be deemed certified for purposes of
11 participation as a M/WBE.

12 The criteria for recertification shall be the same as for
13 certification. An applicant may request an appeal of denial of
14 recertification within ~~ten (10) working~~ fifteen (15) days of
15 receipt of notice of denial. The hearing shall be conducted in
16 the manner described in Section XX (F) of Ordinance No. 93-28 and
17 notice of the outcome of the hearing shall be sent within ten (10)
18 working days of the hearing. This hearing shall be the final step
19 in the administrative review of denial of recertification.

20 An applicant denied recertification may not reapply for
21 certification for one ~~(1) year~~ hundred twenty days from the denial
22 of recertification.

23 **SECTION X.**

24 Section XXI. Graduation from M/WBE Program of Ordinance No.
25 93-28 is hereby renamed as Eligibility for Preference Programs and
26 is amended to read as follows:

27 Participation in the M/WBE preferential programs will be
28 dependent upon the M/WBE's need for the preferences extended to
29 M/WBEs under this Ordinance. The M/WBE shall not be eligible for
30 continued participation in the preferential programs contained in
31 this ordinance ~~as a prime contractor~~ if the business has
32 average/annual gross sales in commodities ~~and/or professional~~
33 ~~services, labor and material~~ in excess of ~~\$1,000,000.00~~ \$2,000,000
34 over the past three years, has average/annual gross sales in
35 professional services in excess of \$3,000,000 over the past three

1 years, or has average/annual gross sales in construction in excess
2 of ~~\$5,000,000.00~~ \$7,000,000 over the past three years. ~~A graduated~~
3 ~~M/WBE shall be counted towards vender's or prime contractor's goal~~
4 ~~attainment when utilized as a subcontractor.~~

5 SECTION XI.

6 Section XXII(A) of Ordinance No. 93-28 is hereby amended to
7 read as follows:

8 A. Membership

9 The M/WBE Advisory Committee shall consist of the
10 following thirteen (13) members:

11 1. One (1) black business owner certified as an M/WBE
12 by Palm Beach County;

13 2. One (1) Hispanic business owner certified as an
14 M/WBE by Palm Beach County;

15 3. One (1) women business owner certified as a M/WBE by
16 Palm Beach County;

17 4. One (1) representative of the Suncoast Chamber of
18 Commerce;

19 5. One (1) representative of the Minority Business
20 Development Center;

21 6. One (1) representative of the Latin American Chamber
22 of Commerce of the Palm Beaches;

23 7. One (1) representative of the Hispanic Human
24 Resources;

25 8. One (1) representative of the National Association
26 of Women in Construction;

27 9. One (1) representative of the National Association
28 of Women Business Owners;

29 10. One (1) ~~representative of the Minority Contractors~~
30 Association minority contractor;

31 11. One (1) representative of the Associated General
32 Contractors Association;

33 12. One (1) representative of the Small Business
34 Development Center; and

35 13. One (1) County Commissioner.

1 Members shall be appointed at large by the Board of
2 County Commissioners and shall serve for staggered terms of three
3 (3) years. Initially five (5) members shall be appointed for a
4 term of three (3) years, four (4) members shall be appointed for a
5 term of two (2) years and four (4) members shall be appointed for
6 a term of one (1) year. Vacancies shall be filled in the same
7 manner as the original appointments for the remainder of the vacant
8 term. Each member shall serve without compensation and may be
9 removed without cause by the Board of County Commissioners at any
10 time. Travel reimbursement is limited to expenses incurred only
11 for travel outside Palm Beach County necessary to fulfill board
12 member responsibilities when sufficient funds are budgeted and
13 available, and upon prior approval of the Board of County
14 Commissioners. No other expenses are reimbursable except
15 documented long distance telephone calls to the liaison County
16 department. All members must be Palm Beach County residents.
17 Members may not be members of more than two other advisory boards
18 appointed by the Board of County Commissioners.

19 SECTION XII.

20 Section XXII(H). of Ordinance No. 93-28 is hereby amended to
21 read as follows:

22 Committee members shall be governed by the applicable
23 provisions of the Palm Beach County Ethics Ordinance ~~upon its~~
24 ~~adoption~~ Resolution R-94-693, as may be amended. Abstention from
25 voting due to a conflict of interest on more than three separate
26 matters during a calendar year shall result in automatic removal.

27 SECTION XIII. REPEAL OF LAWS IN CONFLICT

28 The policy established herein shall be consistent with
29 Ordinance 93-27, as amended, the Palm Beach County Purchasing
30 Ordinance. All local laws and ordinances applying to the
31 unincorporated area of Palm Beach County in conflict with any
32 provisions of this ordinance are hereby repealed to the extent it
33 conflicts with the specific subject matter of this Ordinance.

34 SECTION XIV. SEVERABILITY

35 If any section, paragraph, sentence, clause, phrase or word of

1 this ordinance is for any reason held by a Court to be
2 unconstitutional, inoperative or void, such holding shall not
3 affect the remainder of this Ordinance.

4 SECTION XV. INCLUSION IN THE CODE OF LAWS AND ORDINANCES

5 The provisions of this ordinance shall become and be made a
6 part of the code of laws and ordinances of Palm Beach County,
7 Florida. The sections of the ordinance may be renumbered or
8 relettered to accomplish such and the word "ordinance" may be
9 changed to "section", "article", or other appropriate word.

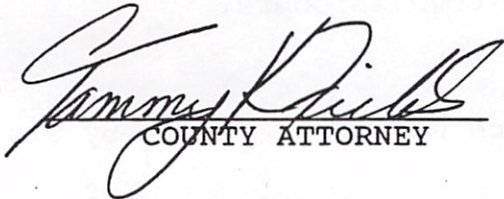
10 SECTION XVI. EFFECTIVE DATE

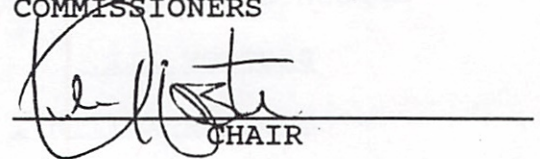
11 The provisions of this amending ordinance shall become
12 effective upon receipt of acknowledgement by the Secretary of
13 State.

14 APPROVED AND ADOPTED by the Board of County Commissioners of
15 Palm Beach County, Florida, on the 21st day of March,
16 1995.

17 APPROVED AS TO FORM AND
18 LEGAL SUFFICIENCY
19

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

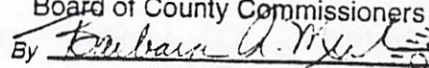
20 
21 COUNTY ATTORNEY

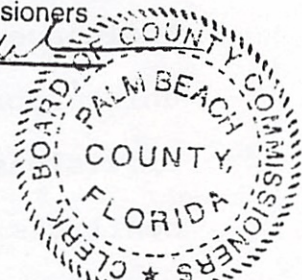

CHAIR

22 Acknowledgement by the Department of State of the State of
23 Florida, on this, the 30th day of March, 1995.

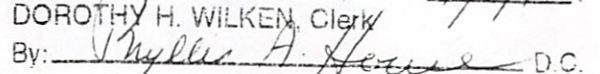
24 EFFECTIVE DATE: Acknowledgement from the Department of State
25 received on the 3rd day of April, 1995 at 3:41 p.M.,
26 and filed in the office of the Clerk of the Board of County
27 Commissioners of Palm Beach County, Florida.

28 [G:\eng\ord\mwbeord3.95]

DOROTHY H. WILKEN, CLERK
Board of County Commissioners
By 
DEPUTY CLERK



STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on 3/21/95

8 DATED at West Palm Beach, FL on 4/5/95
DOROTHY H. WILKEN, Clerk
By:  D.C.